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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Joint Emergency Petition for)
Partial Stay of the Rural Telephone)
Companies Filed Jointly by)
131 Rural Telephone Companies)

CC Docket No. 96-45

RESPONSE
of the
ASSOCIATIONS

The National Rural Telecom Association ("NRTA"), National Telephone Cooperative Association ("NTCA"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), collectively, the Rural Telephone Coalition ("RTC"), and United States Telephone Association ("USTA") (hereafter "The Associations"), hereby provide these comments in response to the Commission's Public Notice, DA 97-1645, released on July 31, 1997, requesting comments on the Joint Emergency Motion for Partial Stay of The Rural Telephone Companies ("Joint Motion").

In response to the November 8, 1996 Recommended Decision of the Joint Board in this proceeding, the Associations jointly advocated an alternative plan for revision of the current universal service support mechanisms.¹ The Associations were very concerned about the impact of some of the recommendations made by the Joint Board on Universal Service in relation to

¹ See, the Associations' (RTC and USTA) *ex parte* letter, March 10, 1997. The State members of the Joint Board endorsed the Associations' recommendations. See State Members' Report on the Use of Cost Proxy Models, Mar. 26, 1997 (*State High Cost Report*) at 2.

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their effect on the continuation of high-quality ubiquitous service to customers in the rural and high cost areas of our nation. The freezing of universal service support, including DEM weighting, would have had a disastrous impact on the ability of customers to receive equivalent service at rates comparable to those customers living in urban areas. In response, the Associations jointly developed the LEC Associations' Universal Service Transition Plan.

The "LEC Association Transition Plan" contemplated that the interstate allocation of traffic sensitive plant attributable to "DEM weighting" would be assigned to the new universal service support mechanism, based upon a frozen allocation factor, rather than a frozen amount.² Similar recommendations were made for High Cost Support and Long Term Support. With some modification, the Commission adopted the recommendations of the Associations in its May 8, 1997 Report and Order,³ thereby assuring universal service and the continued investment in needed telecommunications infrastructure in areas served by rural telephone companies.

The Associations remain in support of the LEC Association Transition Plan which proposed transferring the weighted portion of the DEM allocation to Universal Service Support, at least until rural carriers transition to a lawfully prescribed permanent methodology. The Associations therefore, are not in agreement with the Joint Motion insofar as it seeks to retain the weighted amount in switched access.

² *Id.*

³ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997), ¶¶ 298-99, 303-04.

On the other hand, in previous filings in this proceeding, and in their respective Petitions for Reconsideration of the May 8, Report and Order, the Associations substantively agree with the Joint Motion on the issues of portability of support and the limitations on corporate operations expense, in addition to raising other issues of vital concern to rural telephone companies.⁴

We agree that support based upon an incumbent's cost--whether determined by cost study or average schedules--should not be "portable" to a new entrant. Rather, such LECs must be required to demonstrate their own qualification for support based on their own costs.⁵ Not only is this required by the Act, but it is necessary to prevent both cream-skimming and unjust enrichment. Otherwise, under current regulations,⁶ a new entrant can meet the qualifications of Section 214(e) merely by providing its own facilities⁷ in the low cost portions of a service area, while meeting its obligations to serve the entire area through resale of the incumbent's service in the high cost areas. If the new entrant then receives support based on the incumbent's average cost per line, it will likely experience a substantial windfall. In contrast, the incumbent will have

⁴ RTC Petition for Reconsideration and Clarification (July 17, 1997) at 8; USTA Petition for Reconsideration and/or Clarification (July 17, 1997) at 10.

⁵ *Id.*

⁶ *See generally*, 47 C.F.R. § 54.201

⁷ The "own" facilities requirement of the statute may be met, by Commission interpretation, either with unbundled elements leased from the incumbent, or by physically providing facilities. *Supra*, n.3 ¶¶ 151-176. The RTC has challenged the inclusion of unbundled elements as "own" facilities in its Petition for Reconsideration. *Supra*, n.4, RTC Petition at 13-18.

difficulty continuing to serve the high cost area.⁸

The Associations also agree that the limitation on Corporate Operations Expense was not properly established and believe it should, at the very least, be reformulated so that it does not eliminate support for entirely legitimate costs of providing service.⁹ Any reformulation should recognize the actual needs of small companies, be statistically sound and validated as a control for actual problems. We also agree that the Commission's determination to deny recovery based on actual cost in the case of acquisitions is erroneous and should be reversed.¹⁰

The Associations strongly encourage the Commission to recognize and resolve the issues raised in the various Petitions for Reconsideration in a timely manner. The Associations are confident that the proper avenue to have the issues resolved expeditiously is by the petition for reconsideration process. A stay of the implementation of the Transition Plan for Rural Telephone Companies creates a serious potential for hardship and disruption for these companies and, more importantly, for their customers. It is extremely important that the industry have

⁸ As the Report and Order acknowledges at para. 172, the per line support based on an incumbent's cost may well exceed a CLEC's cost of service in the low cost portions of a study area, so that it could receive support which exceeded its costs. The remedy of limiting the CLEC to support equal to its payments for unbundled elements, still leaves the CLEC with free service to compete against an incumbent which must also actually serve rural areas. The CLEC can avoid any expense in rural areas if it prices its resold services at a level where it has no subscribers. Further, if the CLEC builds its own facilities in the high-density, low cost area, it may well receive support in excess of its costs.

⁹ *Supra*, n.4, USTA Petition at 10.

¹⁰ *Id.*, RTC Petition at 7; USTA Petition at 7.

adequate time to prepare for conversion to the universal service transition plan on January 1, 1998, and that customers continue to receive quality service at rates comparable to those of customers in urban areas.

Respectfully submitted,

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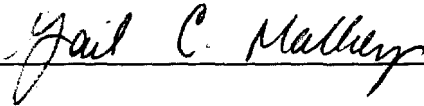
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August 7, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Response of the Associations in CC Docket No. 96-45 was served on this 7th day of August 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

A handwritten signature in cursive script, reading "Gail C. Malloy", is written over a horizontal line.

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